Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter Of	)
	)
Promoting Fair and Open Competitive	)
Bidding in the E-rate Program	)
WC Docket No. 21-455	)

COMMENTS OF THE
CALIFORNIA K12 HIGH SPEED NETWORK (K12HSN)

The California K12HSN[1] thanks the Commission for the opportunity to submit comments on an important rulemaking intended to improve the experience of E-Rate Program participants while also strengthening program integrity and reducing fraud risk. As illustrated in these comments, K12HSN believes that there are already important safeguards in place to promote program integrity and reduce fraud and that the Commission's proposals will detrimentally impact the participation of program applicants and service providers. K12HSN believes that there are other steps the Commission can take to help reduce program complexity which will greatly reduce perceived infractions against the program's competitive bidding rules which are in reality inadvertent errors due to the confusing nature of the rules.

Summary of the Commission's Proposals

Based on recommendations of the federal General Accounting Office (GAO) and Office of Inspector General (OIG) of the Federal Communications Commission (FCC) to reduce fraud risk in the E-rate program ("Program"), the FCC proposes to make multiple changes to the competitive bidding rules of the Program, to:

- Require that all bids be submitted from service providers to the third-party Program Administrator, the Universal Service Administrative Company (USAC), via a bidding portal and not directly to the Program applicants (eligible schools, libraries, and consortia) who are seeking such bids;
- Prohibit all communications between bidders and Program applicants outside of the USAC bidding portal during the competitive bidding process; and
- Require that all documents supporting the competitive bidding process be submitted to USAC at the time the annual FCC Form 471 application for funds is certified, inclusive of evaluation documents.

The FCC indicates several concerns that it is trying to address via the proposed changes: (1) that applicants are misreporting the number of bids they receive on their Form 471 funding requests; (2) that applicants are modifying bids they receive, or are otherwise colluding with service providers during the bidding process in order to circumvent the FCC's open and fair competitive bidding rules; and (3) that applicants are not adhering to the FCC's robust 10-year document retention requirements that are necessary to support participants' compliance with Program rules during Program audits and investigations.

The FCC is proposing these changes in response to the recommendations of the OIG and GAO to enable USAC's direct and contemporaneous oversight of the competitive bidding processes of tens of thousands of Program participants in order to achieve the following stated goals:

- Streamlining Program requirements for applicants and service providers;
- Strengthening Program integrity;
- Preventing improper payments; and
- Decreasing the risk of fraud, waste, and abuse.

Program stakeholders are asked to provide comments on these proposals, and specifically to address whether these measures will impose hardships on Program participants and if the proposals conflict with state and local bidding requirements.

K12HSN Response

It is questionable that a portal providing direct, contemporaneous oversight by USAC will achieve the goals the FCC is seeking and the changes to the competitive bidding rules of the Program will impose a heavy cost to the Program participants. As described in these comments, some of the proposed changes will also conflict with current state and local bidding requirements.

I. Will the Proposed Changes Strengthen Program Integrity?

Based on our experience in our role of providing statewide E-Rate training and support for California school applicants as well as USAC's data from the last several years related to denials for California applicants, K12HSN believes the proposed changes are not needed to strengthen Program integrity. Rather, Program integrity can be strengthened by addressing some of the largest obstacles to applicants' success in the Program. These obstacles include: 1) Difficulty in understanding the complexities of the Program's bidding requirements and how these requirements interact with state and local requirements; and 2) Retention of all necessary documents to support compliance for 10 years from the last date to receive service in accordance with the FCC's rules. We believe the FCC can make adjustments and clarifications to its competitive bidding rules as well as USAC's administration of the Program requirements which can help applicants be more successful in the Program and promote the principles of fair and open competitive bidding resulting in the most cost effective services being funded through the Program.

Furthermore, it is not clear that the proposed rules are needed given that data compiled by Funds for Learning reveals that the FCC's price transparency measures since 2016 show a significant trend of consistent year-over-year lowering of the pricing schools are paying on E-Rate eligible goods and services. In addition, instances of "no bid" and "single bid" circumstances have decreased significantly. We agree with Funds for Learning that the data supports the supposition that the FCC's existing competitive bidding rules are working well, and the proposed rules are an overstep and unnecessary.

We believe that the Program's existing safeguards as well as the safeguards that exist at the local level are working to preserve the integrity of the competitive bidding process and to promote cost-effective purchasing. Although there have been instances of fraud in the Program, the percentage of fraud when compared to the total number of participants and year-over-year funding commitments is extremely small.

Overall, the majority of competitive bidding infractions appear to be rooted in the Program's complexity: misunderstanding or misapplication of confusing rules by applicants, service providers and USAC, and technicalities or "gotchas" that really have no bearing on the validity or integrity of the competitive bidding process itself. We do agree that applicant documentation retention is a problematic area for the Program due to the extraordinary length of time records are required to be retained. The takeaway is that both of these issues could be solved with robust training offerings for Program participants that would prove more cost-effective and less burdensome than the proposed portal.

II. What are the Specific Issues that will Arise for Applicants and Service Providers if the FCC Institutes this Portal?

The FCC is proposing a mandatory bidding portal where all bids are submitted by service providers directly to USAC, the Program administrator, who will hold them for a minimum 28-day period before releasing the bids to the applicant. The perceived benefits of having USAC collect all the bids and hold them for 28 days before releasing them to the applicants are twofold:

1. USAC will have a contemporaneous record of all bids received.
2. This will minimize collusion between applicants and service providers as applicants will not have access to the bids until the required bidding period is concluded.

If the FCC's proposals are enacted, however, some applicants will be forced to preempt state and local bidding requirements, at best causing confusion and at worst effectively barring them from participation in the Program. With regard to the interplay between Federal and California requirements, it is established law that Federal law is supposed to work in conjunction with California law when it comes to competitive bidding requirements. Under Federal funding regulations, the non-Federal public entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. (See, 2 CFR § 200.318.) In other words, for example with regard to a school district

applicant, a California school district must have complied with its own laws and regulations for the procurement of property and services to receive the Federal award. More specifically, "an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements *and are not intended to preempt such state or local requirements*." (See, 47 CFR § 54.503 (b) Competitive Bidding Requirements; Emphasis added.) These problems are described in this section.

A. Mandatory Upload of Bidding Documents Via USAC's Existing Portal is Already in Place and is Already Problematic

In Funding Year 2016, USAC implemented the requirement that all competitive bidding documents such as Invitations for Bid and Requests for Proposal (IFBs and RFPs) be uploaded into the FCC Form 470 in the E-rate Productivity Center (EPC). On its website,[2] USAC indicates:

> "Generally, you are not required to issue an RFP unless your state or local procurement rules or regulations require you to do so. However, if you have issued or will issue an RFP, you must upload that document as part of the your (sic) FCC Form 470 in EPC. Do not upload a document that simply contains a link to the RFP. The actual RFP or RFP document must be uploaded with your FCC Form 470."

Notably, the addition of the requirement for applicants to upload their actual RFP documents into their FCC Forms 470 in the EPC was never addressed in a public notice or rulemaking process, rather it was a procedural change implemented by USAC coincidental with the release of the EPC application portal. Second, formal procurement documents such as IFBs or RFPs constitute legally binding contract documents in many procurements. When implementing the requirement in 2016, neither the FCC nor USAC contemplated how the requirement of uploading these documents in USAC's portal could compromise the competitive bidding process because applicants, in most cases, primarily publicize their IFBs and RFPs to bidders outside of the EPC. Having multiple copies of IFB and/or RFP documents available in multiple locations is still unresolved and should be addressed in any future FCC action on either the existing EPC system or the currently proposed bidding portal.

Importantly, IFBs and RFPs may contain sensitive or confidential information that is not made available to the general public, even in an open competitive bidding process. The sharing of detailed architectural maps of school campuses, information related to the networks of school districts, or details of statewide network hub locations, for example, with the general public creates an unacceptable infrastructure and safety risk for many applicants.

During a typical procurement process these documents are made available to bidders only after an execution of a binding Non-Disclosure Agreement (NDA) between the bidders and the applicants. Even though USAC is requiring the submission of copies of these documents USAC would not be a party to the NDA. In some instances, maps are distributed only at in-person

mandatory events associated with the IFB or RFP, where the applicant can verify that the documents will be used only for bona fide bidding purposes.

Given that the submission of competitive bidding documents creates a risk to applicants, the FCC should remove the requirement that all RFP documents be uploaded into EPC or any contemplated portal. One alternate approach would be to make this an available option, should applicants wish to do so.

B. Proposed 28-Day Bid Holding Period Frequently Does Not Comply with Many Applicants' Current Processes

As described above, applicants' competitive bidding processes are often completed via a formal IFB or RFP. These documents outline the specific requirements that must be adhered to by bidders and often have a timeline that exceeds the 28-day requirements established by the FCC Form 470. The deadline for any particular procurement process is fluid. It may be defined and then extended.

Under California law it is already confusing for applicants to comply with the California procurement requirements when coupled with the Program requirements. There is already the possibility that applicants may overlook publishing notices in a newspaper as required by California law, especially given that FCC forms are posted on the USAC website and school districts often publish RFP's on their own website. Establishing a basic 28-day "holding period" in the portal and then re-defining the period as needed during the process in potentially multiple locations (i.e. in formal bidding documents and in the proposed portal) and via multiple mediums (i.e. newspaper publication, website publication, etc.) complicates rather than streamlines the process and makes it confusing to service providers wishing to bid. The ramifications of failure to follow California public bidding requirements, including newspaper publication, are severe given that such failure can serve as grounds for a bid protest and/or the potential forfeiture of Program funding received for the contract.

C. Receipt and Distribution of Qualified Bids by USAC Increases, Rather than Reduces, the Complexity of the Process for Applicants, Service Providers, and USAC

In the current E-Rate competitive bidding environment, there are a significant number of "SPAM bids" submitted by marketers. These SPAM bids are generated by marketers for almost every FCC Form 470 posted, are directed to the FCC Form 470 contact, and simply include a catalog listing of prices and associated services that do not correspond with the specific scope of goods and services listed on the FCC Form 470, the formal procurement documents, or both. These SPAM bids would not be deemed to be responsive bids because they don't meet the basic requirements specified by the applicant.

We have significant concerns that the adoption of a mandatory bidding portal will dramatically increase the number of SPAM bids generated and will require a significant amount of additional

time and effort to be reviewed by both the applicant and USAC in order to sort the actual bona fide bidders from the SPAM bidders.

Additionally, public school districts in California have long-standing bidding practices developed in accordance with state laws and local governing board policies that would be significantly impacted by restricting bid submissions exclusively through a third-party portal administered by USAC. For example, the following practices or requirements could be rendered inoperable through a third-party electronic bidding portal:

1. Requirement for sealed, hard copy bids to be received as of a specific date and time and to a specific physical location determined by the school district.
2. Requirement for hard copy sealed proposals separated between the technical components and the pricing components where the technical components are opened and evaluated before the pricing components.
3. Public bid openings where bids are opened and read aloud. In some instances, bids are reviewed for responsiveness in this public setting.
4. Requirement for bidders' security which is accepted at the time of the bid in the form of cash, check, or cashier's check that may not be submittable via an electronic portal.

If the FCC's proposals are enacted, organizations may be effectively barred from participation in the Program due to the conflicts described above. We also fear that a mandatory bidding portal will have a chilling effect on service providers being willing or able to submit bids.

D. The Proposed Mandatory Bidding Portal Will Create a Chilling Effect on Program Participation

1) Legal Issues

We are concerned that the adoption of a mandatory third-party bidding portal will lead to applicants receiving fewer qualified and cost effective bids, creating a burden to both the applicants and to the overall Program.

As described above and discussed in more detail below in Section III A., the proposed competitive bidding portal will be in direct conflict with California requirements for public schools in many instances. Any contract that is let in violation of California competitive bidding requirements is void and not enforceable as being in excess of the public school district's power. No payments may be made by a public school district under a void contract. Where a public school district has already made payments to a vendor under a contract let in violation of competitive bidding laws, a cause of action exists to recover the monies paid to the vendor for work and materials furnished to the public school district. Further, estoppel is not available against a public school district so as to preclude recovery from a vendor of money paid under a contract without compliance with competitive bidding requirements. Under California law, vendors dealing with a public agency, such as a school district, are presumed to know the law with respect to the requirement of competitive bidding and act at their peril when the competitive bidding requirements are not followed.

This apparent conflict between the FCC's proposed requirements and California requirements will have a chilling effect among bidders due to the real possibility that a contract will not be enforceable. As noted above, the brunt of this risk will be borne by bidders, thus creating a chilling effect on service provider participation and their response to the E-Rate funded projects.

2) Practical Issues

Furthermore, it is likely that a mandatory bidding portal will have a further negative impact on service providers' ability to effectively respond to procurements due to the fact that local, and not national, account teams drive service provider responses to competitive bidding processes. These teams are more likely to be familiar with the local entity's IFB and RFP processes as they look directly to the applicants as their potential customer for procurement opportunities and their associated requirements and not to USAC for direction on responding to procurements. Moving to a national portal will require a significant effort to educate local account teams on the new FCC rules and will significantly disrupt the competitive bidding processes for years to come. Basic questions come to mind on how service providers might need to make significant adjustments to their current processes for developing and submitting bids: Will each team member need a log in? What assurances will there be that the portal is secure in the information submitted? To what extent is information submitted by bidders confidential? Any of these factors may lead to an overall reduction in bids submitted to procurements. We have a real fear that in response to these new burdensome requirements service providers will favor larger customers by bidding only on larger projects and will simply let the smaller customers fall away.

Smaller, local providers find it burdensome to participate in the Program. With our experience in supporting access to broadband for small, rural schools,[3] we have found that smaller, local providers either have little or no experience with the Program and need to be coaxed to submit bids to E-Rate procurements, or that they have had a negative experience with the Program due to its complexities and deadlines, and are hesitant or refuse to further engage on E-Rate projects. Encouraging them to respond to local procurements can be difficult enough. We fear imposing a complicated bidding portal will further inhibit their participation, leaving applicants with fewer choices, and potentially leaving them with fewer cost effective solutions.

The following is a summary of funding request data from USAC's Open Data platform showing a count of vendors who won E-Rate projects in three funding years, 2019 through 2021. The overwhelming majority of vendors are actually only winning a handful of projects – forty-one percent of vendors were only funded for one funding request number per year.

Table 1: USAC's OpenData platform Showing a Count of Vendors who Won E-Rate Projects in Three Funding Years*

In 2019-2021, vendors who won bids for…	<number>	<percent>	<percent of group>
an average of 1 FRN per year	2208	41.48%	
an average of 2 FRNs per year	869	16.33%	57.81%
between 3 and 10 FRNs per year	1423	26.73%	
between 10 and 50 FRNs per year	611	11.48%	38.21%
between 50 and 500 FRNs per year	201	3.78%	
between 500 and 1000 FRNs per year	7	0.13%	
between 1000 and 5000 FRNs per year	4	0.08%	3.98%
Total unique vendors participating	**5323**	**100.00%**	

*Source: Analysis of USAC Open Data platform by AdTec, Inc.

Per AdTec's analysis, half of the vendors in the dataset were approved for less than $8,000 per year in funding. A quarter were approved for less than $2,600 per year in funding. Given that many vendors find participating in the Program currently to be costly and labor intensive, it stands to reason that many of these vendors will cease participating in the Program if additional complexity is introduced to the Program. Fewer vendors will lead to less competition which will surely reverse the competitive pricing improvements that are referenced above.

E. The Proposed Rule to Prohibit Communications During the Bidding Process Outside of the Portal Will Create Multiple Hardships for Applicants and Service Providers

The FCC proposes to bar any communications between applicants and service providers during the competitive bidding process outside of the proposed mandatory competitive bidding portal.

The perceived benefit of prohibiting communications outside of the bidding portal during the competitive bidding process are the following:

1. All service providers will have the assurance that their questions will be addressed during the competitive bidding process.
2. All service providers will be able to view the questions and responses and thus have access to the same information in the competitive bidding process.
3. USAC will have a contemporaneous record of all correspondence during the competitive bidding process.

As an initial matter, the FCC does not clearly define what "procurement process" means as related to the proposed rule. For example, when does the "procurement process" begin, and when does it end? For the purpose of this rulemaking, we propose that the competitive bidding

process begins at the issuance of the IFB, RFP, or FCC Form 470, whichever is the driver of the procurement, and it ends upon the date bids are due to the applicant. However, as we will illustrate below, communications with potential bidders are wide ranging and if the FCC contemplates imposing any rules related to communications, it needs to be very precise in its requirements related to the timing of communications.

To further illustrate some of the issues we anticipate will be generated by the proposed rule, we will address communications before, during, and after the procurement process.

1) Communications Before the Competitive Bidding Process

Many applicants have an established set of staff and user procedures by way of a purchasing handbook, often based on governing board policies, describing the acceptable interactions between school district staff and potential bidders wishing to do business with the applicant. The purchasing handbook is most often based on applicable legal requirements and will describe the necessary steps to complete a procurement of goods/services. These handbooks will describe who is authorized to conduct procurement processes on behalf of the applicant and who is authorized to contact outside companies for purchases, thus limiting who can make direct purchases of any goods/services to only authorized employees designated by the governing board. These existing processes in the purchasing handbook serve as checks and balances to define the parameters of acceptable communications prior to and during a competitive bidding process.

Proof of concept demonstrations and/or compatibility trials are often necessary to ensure the goods being solicited will simply ‘work’ with existing infrastructure. While it may be simple to suggest drafting a trial period into the competitive bidding phase, the reality is not all items are created equal and not all applicants have the same technological starting point by way of staffing levels, infrastructure design and/or funding resources. Trials may be necessary well in advance of drafting solicitation for goods to help highlight deficiencies in existing infrastructure that may limit the types of goods that can be purchased and deployed. Market experts have highlighted the digital divide that boiled over for public K-12 schools and school districts during the COVID-19 pandemic, but it is evident[4] that schools do not have enough funding to stay up to date with the current technology needs. Prohibiting these types of communications outside of the portal will at best, prevent applicants from conducting proper market research which would prevent them from purchasing goods that are compatible with their existing infrastructure. At worst, it would deny applicants the ability to properly conduct market research and create a bona fide budget with all necessary upgrades to deploy current market goods.

2) Communications During Competitive Bidding Process

a) Pre-bid Site Visits

Once a bid is issued applicants often find it necessary or helpful to bidders to conduct mandatory events where information is conveyed to interested bidders orally and in person prior to bid submission. This practice is often associated with a physical inspection of sites, called a

job walk, for the purpose of enabling bidders to obtain an accurate representation of site conditions and to ensure bidders have enough information to formulate accurate and cost effective bids. The California legislature has recognized the value of these pre-bid site visits by enacting California Public Contract Code section 6610 which recognizes their value and requires that, where such pre-bid site visits, conferences or meetings are mandatory, the notice to bidders must "include the time, date, and location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available." In addition, the section requires, "[a]ny mandatory pre-bid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice." Id.

With regard to the beneficial aspects of job walks for Program-specific projects, job walks may be necessary for both Category one and Category two projects: for Category one, bidders must assess the availability of entrance facilities and conduit sufficient to install the broadband service at the school site; and for Category two, bidders must assess the conditions of the entire school site, how buildings are constructed, and to what extent this may impact their ability to install new fiber, cabling, and wireless access points at various locations on a school's campus. Prohibiting these pre-bid job walks and/or inspections of sites by requiring all communications through a mandatory portal would force applicants to rely on architectural drawings that are often not available or must be drafted in a timely manner to prepare for a limited E-Rate competitive bidding window. Drafting and preparing detailed specifications and drawings of site conditions so that bidders have sufficient information to provide bona fide bid responses will require months to prepare, all at a significant upfront cost to the applicant. We are concerned that small applicants with limited resources will not be able to afford to hire architects or engineers to draft these specifications and drawings, thus resulting in them not being able to pursue these projects via the Program.

Moreover, pre-bid job walks often contribute to cost savings because bidders can visit the site in person allowing for visual inspection of sites, and bidders have the opportunity to submit questions that require clarification and/or additional information to the applicant prior to issuing a bid. Competitive bidding documents have an outlined timeline and instructions for submission of questions, including the contact person to whom such pre-bid questions should be addressed to. Prohibiting these types of communications outside of the portal will prevent applicants from communicating with potential bidders, and vice versa, leaving out critical clarifications and/or additional information for potential bidders to draft a bona fide bid response. Pre-bid communication results in more accurate and cost effective bids, and minimizes expensive change orders that occur after a bid has been accepted and the contract has been awarded.

b) Prequalification

Many California public school districts provide for prequalification of bidders in order for bidders to submit a responsive and responsible bid to a specific project. If a vendor is not prequalified, the public school district cannot accept a proposal from the vendor. The timing in order to be considered validly prequalified is either (1) submission of the prequalification form and related documents within ten business days prior to the bid opening date, or (2) the vendor must

actually be prequalified for at least five business days prior to the bid opening date. Under the California Public Contract Code, a school district must also make available to all bidders a list of district prequalified vendors at least five business days prior to the bid opening date. A California public school district would not be able to meet these legal requirements if the proposed rule prohibiting communications during the bidding process outside of the portal were implemented.

c) Bid openings

Under California law, "[a]ll bids shall be sealed *and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read*." (See, Cal. Pub. Contract Code, § 10304.) (Emphasis added.) No bids may be considered which have not been received prior to the closing time for bids set forth in the invitations to bids. The public agency is required to maintain confidentiality regarding each bid until the public opening and reading takes place. (See, id.) "After being opened the bids shall be available for public inspection and tabulations shall be completed within seven days." (See, Cal. Pub. Contract Code, § 10305.) Bids are irrevocable offers or options given to the public agency involved. This is yet another example of the conflict that would be created by the proposed rule. If communications during the bidding process are prohibited, then the public school district would not be able to comply with the Public Contract Code requirements surrounding reading bids out loud and bidders being present for bid openings. This would result in bid protests being lodged and uncertainty regarding the award of subsequent contracts by the public school district.

3) Communications After Competitive Bidding Process But Before Final Contract

After a competitive bidding process has closed, the applicant opens and begins inspection of bid responses received on or before the due date and time. Inspection by the applicant includes reviewing the submitted bids for responsiveness to the specifications and requirements outlined in the IFB/RFP. While bidders are required to provide all necessary information to complete a bona fide response, it is often necessary for the applicant to request information and/or clarification from bidders. Prohibiting these types of communications outside of the portal will prevent applicants from obtaining critical information to determine if the bidder(s) submitted a bona fide bid response or simply made a calculation error. The adverse effect could result in a higher number of rejected bids and, in some cases, result in an inability to award a contract due to total rejection of bids.

In practice, bidders often attend bid openings and review the bids submitted by all bidders. If a discrepancy is found, oftentimes bid protests are lodged with the applicant once that bid opening has occurred and the bids have been examined. By limiting communication during the bid process and preventing the public and bidders from being present for a bid opening, the Commission would be removing an important oversight tool that helps ensure that Program funds are spent correctly. A bidder may protest a bid award if it is believed the applicant award was inconsistent with the bid specifications, governing board policy and/or was not in compliance with the law. This strengthens program integrity, prevents improper payments, and

decreases the risk of fraud, waste, and abuse. If the proposed rule is implemented, this independent source of review would be removed.

The proposed rule prevents the type of communication needed to resolve bid protests, responsiveness inquiries and responsibility due diligence requirements because it explicitly states that "[p]roviders of services shall not respond to a request for services directly to the requesting entity . . ., but shall submit responses through a secured Web site portal ("bidding portal" or "bid portal") managed by the Administrator." (See, Proposal proposed amendments to 47 CFR Section 54.503(c)(4).) The proposal also provides that "[n]o communication between service providers and applicants related to the competitive bid or the competitive bidding process is permitted outside of the bidding portal during the competitive bidding process." (See, Proposal proposed amendments to 47 CFR Section 54.503(c)(5).)

III. Are There any Other Measures the FCC can Implement to Meet the Stated Goals and to Help Program Participants Understand the FCC's Competitive Bidding Requirements and to Enable Better Record-Keeping and Transparency?

As shown by the above discussion, we believe that rather than enhance Program integrity and administrative efficiency, the changes described in the proposed changes to the Program would create inefficiencies and serious scheduling delays that would create an undue burden on applicants wishing to participate in the Program. Specifically with regard to California law, California already has an extremely strong public policy that requires proper public bidding and this public policy is understood by public agency applicants in California. Imposing the proposed changes to the Program would lead to interference with California bidding laws and regulations regarding the submission of sealed bids and other statutory competitive negotiation processes. Further, the proposed changes to the Program would undermine service providers' willingness to participate in the Program, and limit the legal options that are available to applicants, such as the mini-bid process that is used with E-Rate qualified state master contracts. The totality of these drawbacks far outweighs the potential benefits of the proposed changes to the Program.

As described below, there are alternative options to the proposed changes to the Program available that would achieve the Commission's stated goals of complying with the Commission's competitive bidding rules, providing transparency and promoting fair and open competitive bidding processes, while minimizing potential fraud risk for the Program. As we discuss in more detail below, there are easily implemented alternatives to the Proposal that would achieve the Commission's goals for the Program without the high costs that would result from implementation of the proposed changes to the Program.

A. Current State and Local Measures as well as FCC and USAC Tools Effectively Work in Tandem to Minimize Fraud Risk

As summarized above, California law already enforces a strong public policy requiring competitive bidding to protect taxpayers from fraud, corruption and carelessness on the part of public officials and the waste and dissipation of public funds. (See, Miller v. McKinnon, 20 Cal. 2d 83 (1942); Graydon v. Pasadena Redevelopment Agency, 104 Cal. App. 3d 631, 636 (1980),

cert. den. (1980) 449 U.S. 983; Inglewood-Los Angeles County Civic Center Authority v. Superior Court of Los Angeles County, 7 Cal. 3d 861, 866-867 (1972).) It is settled law that competitive bidding statutes are for the benefit and protection of the public, not the bidders. (See, Rubino v. Lolli, 10 Cal. App. 3d 1059 (1970); Charles L. Harney, Inc. v. Durkee, 107 Cal. App. 2d 570 (1951).) As such, a contract made without compliance with competitive bidding, where such bidding is required by statute, is void and unenforceable as being in excess of the public agency's power. (See, Miller v. McKinnon, supra, 20 Cal. 2d 83, 88.)

As previously noted, no payments may be made by a public entity under a contract let in violation of competitive bidding laws. If such payments are made to a contractor under a contract let in violation of competitive bidding laws, the public agency may pursue a cause of action to recover the monies paid to the contractor for work and materials furnished to the public agency. (See, Cal. Const. art. XI, § 10; Miller v. McKinnon, supra, 83, 89 (1942); Reams v. Cooley, 171 Cal. 150 (1915); Zottman v. San Francisco, 20 Cal. 96 (1862)) Moreover, with regard to public school districts, if payments are made to a contractor under a contract let in violation of competitive bidding laws and the school district official invested by the governing board with authority to act on behalf of the district is found to have committed malfeasance, the school district official shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance. (See, Cal. Ed. Code, § 17606.)

California’s public policy protecting taxpayer funds is so strong that persons dealing with a public agency are presumed to know the law with respect to the requirement of competitive bidding and act at their peril, (see, Miller v. McKinnon, supra, 20 Cal. 3d 83, 89.) As such, no estoppel is available against a public agency so as to preclude recovery from a contractor of money paid under a contract without compliance with a statute requiring competitive bidding. (See, Miller v. McKinnon, supra, 20 Cal. 2d 83, 90; Advance Medical Diagnostic Laboratories v. County of Los Angeles, 58 Cal. App. 3d 263, 272 (1976)).

1) State and Local Measures to Prevent Bid Collusion and Fraud

There are multiple practices in place to ensure open and fair bidding and giving bidders due process. As shown above, California law has stringent requirements already in place to protect taxpayers from fraud, corruption and carelessness on the part of public officials and the waste or misuse of public funds. California public agencies and service providers are charged with understanding this public policy and the requisite bidding requirements that are in place to support the public policy.

The vast majority of California applicants work diligently to adhere to California’s bidding requirements as well as the Commission’s bidding requirements for the Program and, as such, conduct fair and open competitive bidding processes, while minimizing potential fraud. In those rare instances where fraud may be found, there are robust protections already in place to disgorge those monies paid out as a result of fraud. These robust protections extend to situations where fraud may not be present, but perhaps a contract was let in violation of competitive bidding laws. The takeaway is that this legal framework protecting taxpayer funds

already currently exists under California law giving the Commission the legal tools it needs to protect Program funds, even without the proposed changes to the Program being in place.

2) USAC's Existing E-Rate Reports Promote Transparency

Currently applicants must report the number of bids they receive for each FCC Form 470 in the contract record or directly in the funding request on their FCC Forms 471. This information is then publicized in the "E-Rate Request for Discount on Services: FRN Status (FCC Form 471 and Related Information)" dataset on USAC's Open Data Platform. Further, applicants must report specifics of their awarded contracts in the line items of their funding requests. They must report unit pricing and quantity for broadband services, one-time installation and special construction charges, bandwidth speeds up and down, and for equipment, the make, model number, unit pricing, and quantity. This information is publicly available in multiple USAC Open Data datasets: "E-Rate Recipient Details And Commitments" and "E-Rate Request for Discount on Services: FRN Line Items (FCC Form 471 and Related Information)." One could argue these existing transparency measures are important safeguards as they allow losing service providers another opportunity to review information on the competitive bidding process and to determine if they were treated fairly.

Rather than implementing a contemporaneous bidding portal, the FCC could require that applicants, when they report the number of bids received, to identify the names of the bidders and if any bidders were disqualified in their funding requests. However, if the FCC implements this, the FCC will need to provide better direction to applicants on how to report the number of bids. For example, if bids are received late in a formal procurement they are returned unopened. They can't be counted as being 'received.'

The FCC could also direct USAC to make more user-friendly E-Rate datasets in the Open Data platform to enable the public to more readily review this information, further promoting transparency.

3) Available Whistleblower Complaint Processes Provide a Strong Deterrent to Competitive Bidding Fraud

Anyone who has a concern about a competitive bidding process has multiple existing options to report anonymous and confidential complaints. They may do so through USAC's "Submit a Whistleblower Alert," through the "Universal Service Fund Enforcement" phone number of FCC's Enforcement Bureau, or the "Hotline" of FCC's OIG, or any combination of the above. Indeed, many bidders that feel they were treated unfairly already make use of these channels and these often lead to heightened scrutiny on pending funding requests before they are approved, thus enabling USAC to address the issue before funds are actually committed. The availability and sanctity of the whistleblower complaint process is another powerful check against competitive bidding fraud.

B. Proposed Documentation Upload Requirement Will Create Significant Hardship During the FCC Form 471 Filing Window

The proposed requirement for applicants to upload a complete record of their competitive bidding process prior to the submission and certification of their FCC Forms 471 will be difficult to impossible to achieve for most applicants. As we have described, the competitive bidding process can be very complex and protracted which is why so many applicants do not file their FCC Forms 471 until the final two weeks of the application cycle when they are conducting new procurements for the associated funding year. It is important to note that applicants may simply not have all of the documents available at the time the Form 471 is due. For example, documentation of the resolution of bid protests, board meeting minutes, and counter-signed contract documents may not be available at the time the FCC Form 471 is filed. Furthermore, large applicants, such as statewide network consortia, may annually competitively bid hundreds of circuits leading to many multiple contracts with many multiple service providers. It is simply not feasible for these large applicants to have the complete competitive bidding record available and uploaded before completing applications which typically require the full duration of the application window to prepare.

We agree that documentation retention is a problematic area for Program participants. Should the FCC consider adding a document upload feature for the competitive bidding process, we suggest that applicants should have the choice to upload their documents and that both USAC and the applicant must have access to these records for the entire 10-year required documentation retention period. Furthermore, once these documents have been uploaded, USAC reviewers should refrain from requesting copies of these same documents from applicants multiple times, as we have witnessed over the years during Program Integrity Reviews, Payment Quality Assurance Reviews, Beneficiary and Contributor Audits, and any other heightened scrutiny reviews. USAC should first avail themselves of the uploaded documentation before requesting duplicate documentation from the applicant.

C. The FCC Should Revisit Existing Competitive Bidding Requirements that are Vague or Confusing and Lead to Inadvertent and Not Fraudulent Non-Compliance Scenarios

As the Program has evolved, so have the FCC's competitive bidding requirements as well as USAC's administration of the requirements. To add further complexity, determination of whether or not an applicant's competitive bidding process has met FCC requirements can be a judgment call of a USAC reviewer or auditor and there are some requirements that do not have precise or detailed definitions, leaving them open to individual interpretation. Finally, in some instances, there are conflicts between what an applicant may do under state and local competitive bidding rules which are not allowed under Program rules, creating an additional layer of complexity and confusion.

1) Common Denial Reasons for California Applicants

In reviewing the reasons for denials of FCC Form 471 Funding Request Numbers (FRNs) from Funding Year 2016 through Funding Year 2021, we observe that in terms of the preponderance of the number of FRNs denied, issues other than competitive bidding are the root cause. However, even though there are still a significant number of denials that are a result of non-

compliance with the FCC's competitive bidding rules, only 0.6% of the total number of funding requests filed by California applicants for the years 2016 through 2021 were due to competitive bidding violations. It is also notable that 0.063% of funding requests were denied due to fraud, a very small percentage when compared to the total number of funding requests filed.

Table 2: Funding Request Number (FRN) Denials for California Applicants from FY 2016 Through FY 2021*

Reason For Funding Denial	Number of FRNs Denied	% of FRNs Denied	Sum of Funding Denied	% of Funding Denied
Services not eligible	187	23.60%	$308,529	1.70%
Non-responsiveness to USAC Review	138	17.40%	$4,042,599	21.80%
Bidding: Technical issues with bid evaluation	120	15.10%	$3,724,136	20.10%
Over Category 2 budget	71	9.00%	$1,634,570	8.80%
Bidding: Queen of Peace violation	57	7.20%	$169,368	0.90%
Ineligible entities	41	5.20%	$557,027	3.00%
Goldbrener fraud^	33	4.20%	$533,915	2.90%
Bidding: No valid contract or Month-to-Month FCC 470 filed	28	3.50%	$811,858	4.40%
Bidding: Award made before evaluation	26	3.30%	$736,231	4.00%
Bidding: FCC Form 470 mismatch	18	2.30%	$153,099	0.80%
Bidding: Cost effectiveness of dark fiber	16	2.00%	$3,024,615	16.30%
Bidding: Cardinal change without extending 28 days	13	1.60%	$575,407	3.10%
Duplicate services	13	1.60%	$732,274	3.90%
Bidding: 28-day violation	12	1.50%	$599,754	3.20%
Red light status	5	0.60%	$214,204	1.20%
Bidding: Self-provision network - fiber preference	3	0.40%	$390,094	2.10%
Post commitment FCC Form 470 mismatch	3	0.40%	$29,113	0.20%
Bidding: Inappropriate service provider involvement	2	0.30%	$7,680	0.00%
COVID 2nd window	2	0.30%	$254,863	1.40%
Bidding: Inappropriate communication	1	0.10%	$25,984	0.10%
FCC Form 471 category of service mismatch	1	0.10%	$22,634	0.10%
Miscellaneous	1	0.10%	$19,746	0.10%
Post commitment late Form 486	1	0.10%	$3,138	0.00%
Post commitment Miscellaneous	1	0.10%	$2,660	0.00%
Total Denials	**793**		**$18,573,498**	

Total CA Denials Due to Competitive Bidding Violations and as a Percentage of Total Denials	296	37%	$10,218,226	55%
Total CA Funding Requests FY 2016 - 2021	52,046		$2,325,655,244	
CA Competitive Bidding Denials as Percentage of Total Requests		0.60%		0.40%

* Source: USAC's Open Data "E-Rate Request for Discount on Services: FRN Status (FCC Form 471 and Related Information)" dataset as of March 12, 2022. ^ Simon Goldbrener, owner of Gold Consulting and SGoldbrener LTD, pled guilty on February 12, 2020 to defrauding the Program from 2010 to 2016. The 33 FRNs cited represent 0.063% of the total number of funding requests filed by California applicants.

Delving deeper into the details for the competitive bidding violations, it is clear that there are a significant number that are a result of technical issues in administering the competitive bidding process and/or a lack of understanding of Program requirements rather than fraud or abuse. We will further describe these issues in the section below.

2) Cost Effectiveness

In our table, a high number of denials for California applicants are directly associated to the applicants' evaluations of cost effectiveness of bids received according to FCC requirements.

The FCC has a long standing requirement of prioritizing cost effectiveness. This requires applicants to give the most consideration to the price of services when awarding bids, although other factors may be considered.[5] This commonly results in an applicant creating an evaluation matrix of scoring criteria where the price of services is given the highest individual rate in scoring. While the rule itself states that price should be the primary factor considered, USAC further identifies that the price of E-Rate eligible products and services must be the primary factor considered:

> "After you close your competitive bidding process, you will evaluate the bids received and choose the bid that is the most cost-effective. You may consider as many factors in your evaluation as you want, but the price of the eligible products and services must be the primary factor and must be weighted more heavily than any other single factor."[6]

Many of the denials identified for California applicants were for evaluations that did not identify price as the primary factor. However, more troubling are the many more denials where the applicant did evaluate the price as the primary factor but did not separately score the price for eligible goods and services and the price for ineligible goods and services. In the denial comments on the Funding Commitment Decision Letter, USAC states:

> "Documentation provided during the review demonstrates that the cost of the proposals evaluated during your competitive bidding process included costs of both eligible and ineligible products and services. FCC rules require applicants to carefully consider all

> bid solutions and choose the most cost effective solution with price of only the eligible products and services being the highest weighted factor in the bid evaluation process. The cost of ineligible products and services can be included in the bid evaluation as long as it is a separate factor and is not included with the eligible portion of the products and services as the primary factor. Because you included the cost of ineligible products and services in your evaluation of the price of each proposal, funding will be denied."

This disconnect between the language in the FCC rule which describes price alone as the required primary factor versus the language issued by USAC that price of eligible goods and services is required as the primary factor causes confusion. Further, for some procurements, there may be state or local requirements where the lowest overall price must be given the most consideration. This creates a further disconnect for the applicant that may struggle to reconcile these conflicting requirements. It is difficult for applicants to construct compliant IFBs if they do not fully understand ahead of time what is eligible and what is not eligible. When an applicant publishes in its IFB or RFP the basis for scoring, and identifies total price as the primary factor, they are automatically and inadvertently at risk for USAC denial.

Another source of confusion are the service providers' bids themselves, which may not adequately identify eligible price and ineligible price. There is no single resource for applicants to use to independently verify the E-Rate eligibility of products and services proposed; they must rely on the representations made by the service providers in their bids or by finding and viewing manufacturer websites that are not consistently or readily available. Rather than focusing resources on a competitive bidding portal, USAC could provide an independent public resource for identifying the eligibility and ineligibility of products and services. This would greatly assist both bidders in identifying eligible and ineligible goods and services while preparing their bids and applicants in reviewing the bids received so they may better meet the FCC's bid evaluation requirements. USAC has detailed product eligibility information provided to them by manufacturers for the purpose of Program Integrity Review. It only makes sense to make this information publicly available so that service providers and applicants can avoid this common "trap" in the bidding process.

3) Cardinal Change and 28-Day Bidding Requirement

A number of funding denials for California applicants are due to so-called "cardinal changes" made to the scope of a procurement during the competitive bidding process where the applicant did not re-start the mandatory 28-day bidding process required by FCC rules after issuing clarifications to bidders during the course of the procurement. While cardinal change is not addressed in specificity on USAC's E-Rate website, it was last addressed in writing by USAC in a February 1, 2019, *Schools and Libraries News Brief****[7]*** which states:

> "In general, if you are making one or more significant ("cardinal") changes that are outside the original scope of your competitive bid, you should file a new FCC Form 470. Service providers that are not interested in bidding on the services contained in the original scope of your project or services may be interested in bidding on your changed scope, and vice versa…If your changes can fit into the description of your existing FCC

> Form 470 – and you attached at least one RFP document to your original form – you can add one or more RFP documents to provide information about the change(s) you want to make. However, if you post a new RFP document and your changes are significant, you must restart your 28-day clock."

In the stated guidance the word "significant" is certainly a subjective term and subject to individual interpretation by not only parties to the procurement process, but also to individual USAC reviewers and auditors. There is no bright line nor any further guidance from USAC on what constitutes a "significant" or "cardinal" change. This lack of clarity creates confusion for applicants, bidders, and USAC and is effectively a "trap" leading to funding denial or recovery years after the procurement has concluded.

In looking at the evolution of the Program's competitive bidding requirements, the journey from the first definition of cardinal change to USAC's current interpretation thereof is quite striking. Cardinal change, in terms of the Program, was first defined in the Federal-State Joint Board of Universal Service, Fourth Order on Reconsideration specifically in terms of contract modifications. The Order states:

> "Where state and local procurement laws are silent or are otherwise inapplicable with respect to whether a proposed contract modification must be rebid under state or local competitive bid processes, we adopt the "cardinal change" doctrine as the standard for determining whether the contract modification requires rebidding. The cardinal change doctrine has been used by the Comptroller General and the Federal Circuit in construing the Competition in Contracting Act (CICA) as implemented by the Federal Acquisition Regulations. The CICA requires executive agencies procuring property or services to "obtain full and open competition through the use of competitive procedures."

It further goes on to state:

> "The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract. Because we believe this standard reasonably applies to contracts for supported services arrived at via competitive bidding, we adopt the cardinal change doctrine as the test for determining **whether a proposed modification will require rebidding of the contract**, absent direction on this question from state or local procurement rules. If a proposed modification is not a cardinal change, there is no requirement to undertake the competitive bid process again." (emphasis added)

It appears that USAC has, over the course of time, conflated the term cardinal change as it applies to contract modifications to modifications made in the bidding process itself. We feel the application of this principle to the bidding process far exceeds the original intent of the Federal-State Joint Board of Universal Service when it first addressed the concept of cardinal change related to contract modifications.

Furthermore, USAC makes no reference to state or local procurement rules in its guidance to applicants whereas the Fourth Order on Reconsideration clearly states that this principle would apply first to contract modifications and then only when absent direction from state or local procurement rules. There is a specific California statute that applies to determine whether a proposed contract modification must be rebid under state or local competitive bid processes law. Under California law, the governing board of a school district may authorize changes in plans and specifications and order extra work performed without competitive bidding provided the cost of the extra work to be performed does not exceed the limit of expenditures allowed without bids or does not exceed ten percent of the original contract price, whichever is greater. (See Public Contract Code section 20118.4).

Because of the lack of consistency in the definition of the term cardinal change in the Program's competitive bidding requirements, the lack in clarity of what is termed a "significant" change in the scope of a procurement, and the potential for arbitrary and subjective interpretation of these terms, we ask the FCC to direct USAC back to the definition as adopted in the Federal-State Joint Board of Universal Service, Fourth Order on Reconsideration as it applies to contract modifications, and not the competitive bidding process.

4) Queen of Peace "Or Equivalent" Requirement

A number of funding denials for California applicants are for so-called Queen of Peace violations. In 2011, the FCC issued the Queen of Peace decision which instituted a major clarification of the FCC's open and fair bidding requirements. The order was issued in response to an appeal filed by Queen of Peace High School, which was denied funding because it cited on its FCC Form 470 the name of a specific service provider that sold its own proprietary web hosting service under the type of services sought. In the order, the FCC clarified that the FCC's competitive bidding rules prohibit applicants from including a particular manufacturer's name, brand, product or service in an FCC Form 470 or request for proposals (RFPs) unless they also use the words "or equivalent" because to do so poses a risk to the competitive bidding process.

Although we can understand why the FCC would prohibit an applicant from listing a specific service provider on its FCC Form 470, the FCC's expansion of this clarification to include a prohibition against specifying manufacturers' name and products without using the words "or equivalent" has created a hardship for applicants, particularly those seeking funding for Category two services.

California allows for public schools, for the purpose of purchasing technology, to standardize on a specific manufacturer. Specifically, California Public Contract Code section 3400 and other applicable law, permit public school districts to designate specific materials, products, things, or service in its bids or requests for proposals when required findings are made by the public school district's governing board. The findings are then required to be described in the invitation for bids or proposals that a particular material, product, thing, or service is designated by specific brand or trade name. This statutory framework permits public school districts to standardize on a specific manufacturer. The basic conflict between what California and local policy allows and what the FCC restricts, is in of itself a source of confusion. Furthermore, there

is good reason for these state and local policies to exist. Where schools are limited to awarding a procurement to the lowest bidder per state requirements, there is a high level of risk that bidders will propose, in order to achieve the lowest price, an alternative manufacturer's products which may not be compatible or functional within schools' existing networks or are otherwise substandard or inferior. The risk of making a significant outlay of public funds for a non-operable or less than functional network is unacceptable for most schools, particularly when schools are so reliant on these networks for their daily operations and for the safety of their students and staff.

It should be further noted that unlike the Queen of Peace example, where the school indicated a unique service provider with a proprietary product only it (a single bidder) could provide, there are, in most instances, many multiple service providers that are authorized to re-sell the equipment of commonly-specified technology manufacturers. Take, for instance, two commonly-referenced manufacturers on Category two funding requests, Aruba and Cisco. Both of these manufacturers have public websites which display partners or resellers that operate in specific regions across the United States. Utilizing HP's website,[8] a search for Aruba resellers in California yielded a result of 731 resellers. In performing a search for Cisco retailers in California under the industry type education, Cisco reports 249 resellers.[9] One must ask if there is such a preponderance of resellers for manufacturers whose products are commonly purchased by E-Rate applicants why there is an impression that there is risk to the competitive bidding process by applicants specifying specific manufacturers, especially when it is allowed by state law and local governing boards. We rather think there is an unacceptable risk to applicants in being forced to choose substandard or inferior products, or products that will lack functionality in their networks, merely due to the lowest price requirement. We ask the FCC to revisit its Queen of Peace decision to determine if it expanded beyond the issue actually described in the Queen of Peace scenario, which was so restrictive as to allow for only one bidder, and if its expansion to technology manufacturers is appropriate or even in the best interest of cost effective purchasing.

5) FCC Form 470 Category of Service Mismatch

There are numerous comments on the record asking to collapse Category two subcategories into a single category of service to eliminate the subcategories of Internal Connections, Basic Maintenance of Internal Connections, and Managed Internal Broadband Services on the FCC Form 470. Applicants consistently get caught in a trap when there is eligibility across these subcategories and they fail to cite the correct subcategory of service on the FCC Form 470. For example, a school may be seeking equipment under Internal Connections but the provider may include, in its bid, items that could be classified as Basic Maintenance of Internal Connections. This mismatch, which is due to no intentional fault of the applicant, will lead to an automatic denial of the portion of the funding request that does not have a corresponding citation on the FCC Form 470. Another example of a mismatch is when an applicant lists bandwidths, transmission type, and quantities for broadband service on the FCC Form 470 that do not match the IFB or RFP or the resulting contract. Again, these mismatches, often due to either a typographical error in completing the form, or a misunderstanding on how to complete the form, leads to funding denial, potentially for a long-term contract. We reiterate the appeal to the FCC

to collapse the subcategories under Category two, and/or provide some other sensible path for relief to applicants when errors are discovered on their FCC Forms 470 which do not compromise the integrity of the competitive bidding process. We believe this will lead to many fewer denials of funding requests for so-called competitive bidding violations.

Conclusion

In conclusion, we want to make clear that these comments are intended to illustrate the "traps" applicants may fall into through no fault of their own, or through confusion created by unclear rules or requirements for the E-Rate competitive bidding process. The FCC's proposal to create a mandatory bidding portal will not resolve these common technical issues which lead to inadvertent errors or the confusion applicants and service providers have with existing rules and requirements that lead to non-compliance with the FCC's competitive bidding rules. Further, and in our opinion of the utmost importance, implementation of the proposed rules will create unnecessary hardships for all E-Rate program applicants and service providers and will have a chilling effect on their participation, especially for smaller applicants and providers that are already marginalized by the current complexities of the program. We ask that the Commission abandon its proposed rules for a mandatory bidding portal and refocus on improvements to unclear rules and requirements and other transparency measures that may be implemented with information already available to the Program.

Respectfully submitted,

/s/
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[1] K12HSN is a state program funded by the California Department of Education. The California Department of Education competitively selected the Imperial County Office of Education (ICOE) as the Lead Education Agency (LEA) and manager of the K-12 High Speed Network program. K12HSN provides the California K-12 community with Network Connectivity, Internet Services, Teaching and Learning Application Coordination, and E-Rate Training and Support.

[2] See https://www.usac.org/e-rate/applicant-process/competitive-bidding/ (last visited on March 25, 2022).

[3] K12HSN is the administrator of California's Broadband Infrastructure Improvement Grant, which connected 437 of schools, primarily in rural locales, to the high-speed capacity broadband connections required to administer statewide mandatory testing.

[4] See "How Much Longer Will Schools Have to Scrape Together Technology Funding?" at https://www.edsurge.com/news/2021-09-03-how-much-longer-will-schools-have-to-scrape-together-technology-funding

[5] § 54.511 Ordering services.

(a) Selecting a provider of eligible services. Except as exempted in § 54.503(e), in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.

[6] Step 2: Selecting Service Providers How to Select a Service Provider at https://www.usac.org/e-rate/applicant-process/selecting-service-providers/ (last visited March 25, 2022)

[7] The Schools and Libraries News Brief is available as a free e-mail subscription to interested parties. While the News Brief is an effective tool in publicizing information about the latest news in the Program, we feel that official guidance on Program requirements should also be addressed on USAC's website where it may be easily viewable by Program participants.

[8] See https://partnerconnect.hpe.com/partners (last visited March 25, 2022).

[9] See https://locatr.cloudapps.cisco.com/WWChannels/LOCATR/openBasicSearch.do?dtid=odiprc001257 (last visited March 25, 2022).